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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,686

11/17/2006

Heinrich Selle

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EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

09/01/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/599,686	SELLE, HEINRICH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hilary Gutman	3612	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-27 is/are pending in the application.
- 4a) Of the above claim(s) 16, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 17-21 and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 3612

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species A (Figures 1-3, 5-7) in the reply filed on 8/12/09 is acknowledged.

2. Claims 16, 22, 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 8/12/09.

### ***Information Disclosure Statement***

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Specification***

4. The disclosure is objected to because of the following informalities: at [0001], line 3, and [0011], lines 2 and 3, reference is made to specific claims and the phrases "of claim 1" as well as "claims 13 or 14" are disclosed. This is inappropriate language for the specification. No claims should be specifically referred to since the language, content, and numbering of the claims may change throughout prosecution. Specifically in this instance, these claims have been altogether canceled. The offensive language should be deleted from the specification.

Appropriate correction is required.

Art Unit: 3612

***Claim Objections***

5. Claim 17 is objected to because of the following informalities: on line 3, “extending” should perhaps be “extends”; and on line 5, “extending” should be “extends” and “and” should be inserted before “forms”. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 15, 17-21, and 24-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitations "at least two elements" in line 4, "its hollow cylindrical section" in line 7, and "the outer edge" in line 13. There is insufficient antecedent basis for these limitations in the claim. Also, the phrase "and/or" on line 10 is confusing and unclear as to what the applicant intends to recite "and" or "or".

Claim 17 recites the limitations "a recess" in line 3, "an outer edge" in lines 3-4, and "a material lug" in lines 5-6. There is insufficient antecedent basis for these limitations in the claim.

Claim 18 recites the limitation "at least two material lugs" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "a material lug" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3612

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 19 recites the broad recitation the collar, and the claim also recites "in particular a material lug" which is the narrower statement of the range/limitation.

Claim 21 recites the limitation "a material lug" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 26 recites the limitation "the vehicle body" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 27 recites the phrase "and/or" on line 7 which is confusing and unclear as to what the applicant intends to recite "and" or "or".

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 15-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE '305.

DE '305 discloses an articulated joint mechanism with an articulated connection of at least two elements 2a, 2b, 2d, 2e, the mechanism comprising: a pivot pin 4 on which the two elements are mounted next to one another rotationally with respect to the longitudinal axis of the pivot pin, wherein at least one bushing 9 is located on the pivot pin on which a first element is mounted on its hollow cylindrical section 10, 10a, for prevention of rattling noises during driving, and for which an elastically formed collar 90a extending in the radial direction is formed with an undulating profile (Figure 3) in the axial direction, which is designed to compensate for at least one of axial and radial play between the first element and a second element. At least two material lugs 10 are provided on regions of the collar that are oppositely situated relative to a longitudinal axis of the bushing. The collar has at least one bulge in the axial direction thereof. The bulge has a groove-like design (seen in cross section Figure 4a, 4b). The groove-like bulge is provided on the lug 10a.

Art Unit: 3612

Although DE '305 does not specifically disclose the joint mechanism for a folding top mechanism, it is apparent that the mechanism can be used for such a configuration. Moreover, no specific structural limitations of the folding top mechanism are provided in the body of the claim. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the joint mechanism of DE '305 on a conventional prior art folding top (as evidenced by Schmitt 5,599,056) in order to provide the benefits of the bushing of DE '305 to the components of a folding top mechanism.

11. Claims 15-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dietrich et al.

Dietrich et al. (4,951,349) disclose an articulated joint mechanism with an articulated connection of at least two elements 1 and 2,3, the mechanism comprising: a pivot pin 16 on which the two elements are mounted next to one another rotationally with respect to the longitudinal axis of the pivot pin, wherein at least one bushing 5,6, is located on the pivot pin on which a first element is mounted on its hollow cylindrical section for prevention of rattling noises during driving, and for which an elastically formed collar extending in the radial direction is formed with an undulating profile (Figures 7,8) in the axial direction, which is designed to compensate for at least one of axial and radial play between the first element and a second element. At least two material lugs 7, 7' are provided on regions of the collar that are oppositely

Art Unit: 3612

situated relative to a longitudinal axis of the bushing. The collar has at least one bulge in the axial direction thereof. The bulge has a groove-like design (seen in Figure 5). The groove-like bulge is provided on the lug.

Although Dietrich et al. do not specifically disclose the joint mechanism for a folding top mechanism, it is apparent that the mechanism can be used for such a configuration. Moreover, no specific structural limitations of the folding top mechanism are provided in the body of the claim. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the joint mechanism of Dietrich et al. on a conventional prior art folding top (as evidenced by Schmitt 5,599,056) in order to provide the benefits of the bushing of Dietrich et al. to the components of a folding top mechanism.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '305 or Dietrich et al. in view of the well known prior art.



Art Unit: 3612

DE '305 and Dietrich et al. both lack the specific elements being an articulated arm, a hydraulic cylinder, or a main bearing fixed to the vehicle body of the car. However, the examiner takes official notice that these elements of a folding top are well known in the prior art.

Conventional folding top mechanism includes articulated arms (as evidenced by Schmitt 5,599,056), hydraulic cylinders or pistons, and main bearings to support the other components. Furthermore, conventional bushings are provided between these elements to promote ease of rotation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have allowed one of the elements of DE '305 or Dietrich et al. to be one of an articulated arm, hydraulic cylinder, and main bearing, in order to provide the elements with the benefit of the bushings.

Applicant may seasonally challenge, for the official record in this application, this and any other statement of judicial notice in a timely manner in response to this office action. Please specify the exact statement to be challenged. Applicant is reminded, with respect to the specific challenge put forth, of the duty of disclosure under Rule 56 to disclose material which is pertinent to patentability including claim rejections challenged by applicant.

***Allowable Subject Matter***

14. Claim 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
15. Claim 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

With regard to claims 17 and 27, Dietrich et al. (4,951,349) further disclose a recess (Figure 5) in a first section at least approximately radially over the collar, and in a second section extending at least approximately in the circumferential direction which forms the material lug. However, Dietrich et al. fail to show the first section extending from an outer edge of the collar.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hilary Gutman/  
Primary Examiner, Art Unit 3612